

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Shakina Griffith	Team: Team # 1	CCRB Case #: 201213089	<input type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Saturday, 10/06/2012 10:15 PM	Location of Incident: Morris Avenue and East 184th Street	Precinct: 46	18 Mo. SOL 4/6/2014	EO SOL 4/6/2014	
Date/Time CV Reported Sat, 10/06/2012 11:03 PM	CV Reported At: CCRB	How CV Reported: Call Processing System	Date/Time Received at CCRB Sat, 10/06/2012 11:03 PM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Jonathan Vasquez	11731	951370	046 PCT
2. POM Gene Dolce	27646	950338	046 PCT
3. POM Cesar Gomez	26485	941024	046 PCT
4. An officer			046 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Jonathan Vasquez	Abuse: PO Jonathan Vasquez searched the car in which § 87(2)(b) was an occupant.	
B.POM Cesar Gomez	Abuse: PO Cesar Gomez searched the car in which § 87(2)(b) was an occupant.	
C.POM Gene Dolce	Abuse: PO Gene Dolce frisked § 87(2)(b)	
D.POM Gene Dolce	Abuse: PO Gene Dolce searched § 87(2)(b)	
E.POM Cesar Gomez	Abuse: PO Cesar Gomez threatened to arrest § 87(2)(b)	
F. An officer	Discourtesy: An officer spoke discourteously to § 87(2)(b)	
G.POM Cesar Gomez	Discourtesy: PO Cesar Gomez spoke discourteously to § 87(2)(b)	

Case Summary

On October 6, 2012, § 87(2)(b) filed this complaint via the call processing system with the Civilian Complaint Review Board (CCRB) (encl. 5a-b).

On October 6, 2012, at approximately 10:15 p.m., § 87(2)(b) was pulled over at Morris Avenue and East 184th Street in the Bronx by PO Gene Dolce, PO Cesar Gomez, and PO Jonathan Vasquez of the 46th Precinct. The following allegations resulted:

Allegation A- Abuse of Authority: PO Jonathan Vasquez searched the car in which § 87(2)(b) was an occupant.

§ 87(2)(g)

Allegation B- Abuse of Authority: PO Cesar Gomez searched the car in which § 87(2)(b) was an occupant.

Allegation E- Abuse of Authority: PO Cesar Gomez threatened to arrest § 87(2)(b)

Allegation G- Discourtesy: PO Cesar Gomez spoke discourteously to § 87(2)(b)

§ 87(2)(g)

Allegation C- Abuse of Authority: PO Gene Dolce frisked § 87(2)(b)

Allegation D- Abuse of Authority: PO Gene Dolce searched § 87(2)(b)

§ 87(2)(g)

Allegation F- Discourtesy: An officer spoke discourteously to § 87(2)(b)

§ 87(2)(g)

This complaint was originally assigned to Investigator Wendy Sawyer. Upon her departure from the agency, the complaint was reassigned to the undersigned on February 19, 2013. § 87(2)(g)

Results of Investigation

Civilian Statement

Complainant/Victim: § 87(2)(b)

- § 87(2)(b) is a § 87(2)(b)

- At the time of the interview, § 87(2)(b)

CCRB Statement

In addition to his original complaint, § 87(2)(b) provided a phone statement on October 22, 2012 (encl. 6a), was interviewed at 1 MetroTech on January 24, 2013 (encl. 7a-f), and answered a follow-up question on February 19, 2013 (encl. 8a). His original complaint and statements were generally consistent with any exceptions noted.

On October 6, 2012, at approximately 10:15 p.m., § 87(2)(b) drove from his house, located at 535 East 182nd Street in the Bronx, and drove on Morris Avenue toward Fordham Road to pick up his fifteen year old son, Maxwell Smith. § 87(2)(b) drives a 2008 black four-door Acura TL Type S which is registered to his mother-in-law, § 87(2)(b). While stopped at a red light on the corner of East 184th Street and Morris Avenue, § 87(2)(b) noticed the lights on a marked van. § 87(2)(b) pulled over to the left on East 184th Street and Morris Avenue and PO Gene Dolce, PO Cesar Gomez, and PO Jonathan of the 46th Precinct, who were identified via investigation, exited the van. PO Vasquez was described as a slim white male in his 20s and 5'11". PO Dolce was described as a Hispanic male with a tan complexion, average build, and 5'9" to 5'10". PO Gomez was described as a Hispanic male in his 30s with a tan complexion, average build, and 5'9" to 5'10". When PO Vasquez and PO Dolce approached § 87(2)(b) on the driver's side and PO Gomez was on the passenger's side, § 87(2)(b) rolled down the driver and passenger windows. PO Dolce instructed § 87(2)(b) to turn off his car. § 87(2)(b) asked why he had to turn off his car. PO Gomez said, "Shut off your car. We can do this either the hard way or the easy way." After being instructed to turn off his car approximately three times, § 87(2)(b) complied. PO Gomez told PO Vasquez to "snatch" § 87(2)(b) out of his vehicle. PO Vasquez opened § 87(2)(b)'s door and § 87(2)(b) started to exit while PO Dolce held his left inner arm.

PO Dolce led § 87(2)(b) to the rear of his vehicle and put § 87(2)(b)'s hands on the trunk of his car. PO Dolce turned § 87(2)(b) around and put § 87(2)(b)'s hands in the air. PO Gomez opened § 87(2)(b)'s rear passenger door and he and PO Vasquez began to search inside. PO Vasquez searched the front of § 87(2)(b)'s vehicle and the glove compartment. PO Gomez had his knee on the seat and searched the back of § 87(2)(b)'s vehicle. PO Dolce patted down § 87(2)(b)'s arms, waist, legs, and ran his fingers in the back of § 87(2)(b)'s shoes. § 87(2)(b) pulled his pant legs up to his knees. PO Dolce placed three fingers along the inside of § 87(2)(b)'s front right jean pocket. PO Dolce asked what the item in his front right pocket was and § 87(2)(b) said that it was his lip balm and money. PO Dolce instructed § 87(2)(b) to remove the items and he complied. § 87(2)(b) went to reach for his wallet in his right back pocket and PO Dolce grabbed his wrist. The wallet was placed on the trunk. The frisk and search lasted approximately thirty seconds. § 87(2)(b) commented that he did not appreciate the way he was being treated. PO Gomez said, "Shut up. You want to go to jail?" PO Dolce asked § 87(2)(b) if he possessed drugs and weapons in his vehicle; § 87(2)(b) said no. PO Dolce asked § 87(2)(b) where he was going and § 87(2)(b) said that he was going to Maxwell Smith's house. When § 87(2)(b) tried to turn around to see what PO Vasquez and PO Gomez were doing, PO Dolce instructed him to turn around and be quiet. Maxwell Smith exited his mother's vehicle and witnessed the incident from a distance when § 87(2)(b) was outside of his vehicle; however, it unclear at which point § 87(2)(b) was outside of his vehicle that Maxwell Smith began to witness.

Approximately ten minutes after the vehicle search, § 87(2)(b) returned to his car. PO Gomez asked § 87(2)(b) for his license and registration, which was provided. One of the officers, § 87(2)(b) did not know who, said that he was being a "hardass" and an "asshole."

Approximately ten minutes later, PO Vasquez gave § 87(2)(b) a summons for having a covered license plate; however, § 87(2)(b) did not see PO Vasquez write the summons. § 87(2)(b) walked to the driver's side of the van, asked for the reason for the summons, and requested the officers' names and shield numbers. PO Vasquez, who was the driver, provided his shield number and § 87(2)(b) wrote it down. PO Gomez, who was the passenger, provided his name and shield number quickly. PO Dolce yelled something. When § 87(2)(b) said that he needed time to record the information, PO Gomez told PO Vasquez, "We ain't got time for this shit" and the officers drove away.

When § 87(2)(b) re-entered his vehicle, the glove compartment and center console were open and some of the items were on the seats. § 87(2)(b) drove to the 46th Precinct stationhouse to speak to someone about the incident. When § 87(2)(b) entered the stationhouse, an unidentified female officer pointed to a red sign and informed § 87(2)(b) that he could call the number on the sign to file a complaint.

NYPD Statements:

Subject Officer: PO GENE DOLCE

- *PO Dolce is a § 87(2)(b)*
- *On October 6, 2012, PO Dolce worked from 7:30 p.m. to 4:05 a.m. the following day and was assigned to Sector I. PO Dolce worked with PO Jonathan Vasquez and PO Cesar Gomez in uniform. The officers were assigned to a marked van, vehicle number 8610.*

Memo Book

At 10:15 p.m., PO Dolce wrote that § 87(2)(b)'s car was stopped at the corner of East 184th Street and Morris Avenue. PO Dolce prepared a Stop, Question, and Frisk Report. § 87(2)(b) was highly irate and combative with the officers and made a lot of movement around the vehicle. § 87(2)(b) refused to turn vehicle off and said, "No, this is my car, I don't have to." § 87(2)(b) was pulled out of the vehicle and frisked for weapons out of fear for the officers' safety. PO Vasquez issued § 87(2)(b) a summons (encl. 9a-c).

Stop, Question, and Frisk Report

PO Dolce prepared a handwritten Stop, Question, and Frisk Report on the date of the incident. PO Dolce observed § 87(2)(b) for five seconds before he was stopped. § 87(2)(b) was suspected of possessing a weapon and a circumstance that led to the stop was furtive movements. An additional circumstance that led to the stop was § 87(2)(b)'s evasive, false, or inconsistent response to the officer's questions. PO Dolce explained the reason for the stop to § 87(2)(b) was frisked because of furtive movements and because he refused to comply with the officer's directions, which led to a reasonable fear of safety. § 87(2)(b) was not searched. § 87(2)(b) was issued a summons for a license plate cover (encl. 10-b).

CCRB Statement

PO Dolce was interviewed at the CCRB on May 16, 2013 (encl. 11a-c) and was re-interviewed at the CCRB on July 24, 2013 (encl. 12a-b).

On October 6, 2012, at approximately 10:15 p.m., PO Vasquez was the driver, PO Gomez, was the front passenger, and PO Dolce was the rear passenger in their assigned van. PO Dolce also worked with PO Jeremy Cartica of the 46th Precinct; however, PO Cartica was at the stationhouse

at the time of the incident. PO Dolce, PO Gomez, and PO Vasquez patrolled for approximately two hours before they observed that § 87(2)(b) was driving with a license plate that was obscured by a cover. PO Dolce did not remember who decided to pull § 87(2)(b) over. The turret lights and sirens were activated to indicate to § 87(2)(b) that he needed to pull over.

PO Dolce, PO Vasquez, and PO Gomez exited the van at the same time. PO Vasquez approached § 87(2)(b) on the driver's side while PO Dolce and PO Gomez stood next to one another on the passenger's side. PO Dolce and PO Vasquez instructed § 87(2)(b) to turn his car off and § 87(2)(b) yelled that he would not turn his car off. PO Dolce did not remember if § 87(2)(b) turned his car off. PO Dolce did not remember if § 87(2)(b) used any obscenities. PO Dolce looked into § 87(2)(b)'s car, but he did not see anything.

§ 87(2)(b) moved his hands upward, toward the center console, and toward the glove compartment. PO Dolce did not remember if § 87(2)(b) reached for anything else in his vehicle. PO Dolce did not know if § 87(2)(b) reached toward those areas to obtain his documentation and he did not know if § 87(2)(b) was reaching for a particular item. PO Dolce did not know if § 87(2)(b) was instructed to show his hands. PO Dolce did not hear an officer request to see § 87(2)(b)'s license and registration and he did not remember if § 87(2)(b) provided it. § 87(2)(b) was non-compliant with PO Vasquez's instructions to turn off his vehicle. PO Dolce did not know what other instructions were given to § 87(2)(b) and he did not remember if PO Gomez gave any instructions to § 87(2)(b).

PO Dolce suspected that § 87(2)(b) possessed a weapon because of his movement in his vehicle. § 87(2)(b)'s movements made PO Dolce think that he was armed because PO Dolce did not see the exchange of documentation and § 87(2)(b) could have been hiding a weapon since individuals also hide weapons next to and underneath their seats and in the center console. PO Dolce did not remember if other factors led him to believe that § 87(2)(b) was armed. PO Dolce walked to the driver's side of § 87(2)(b)'s vehicle and instructed him to exit. PO Dolce did not feel safe talking to § 87(2)(b) in the vehicle because § 87(2)(b) continued to move and he did not know if § 87(2)(b) possessed any weapons in his vehicle or on his person. PO Dolce also did not feel safe because of § 87(2)(b)'s violent demeanor, which was the yelling and hand movements. PO Dolce did not remember what § 87(2)(b) yelled. PO Dolce instructed § 87(2)(b) at least twice to exit his vehicle before he complied. § 87(2)(b) exited his vehicle willingly and PO Dolce did not place his hands on § 87(2)(b) as he exited. Once § 87(2)(b) was outside of his vehicle, PO Dolce thought that § 87(2)(b) was still armed because § 87(2)(b) continued to move around and because of his violent demeanor. PO Dolce did not remember if any environmental factors added to his belief that § 87(2)(b) was still armed. PO Dolce did not remember observing any items on § 87(2)(b) once he was outside of his vehicle. PO Dolce brought § 87(2)(b) to the rear of his vehicle and frisked him.

PO Dolce did not remember asking § 87(2)(b) if he had any items in his pockets prior to the frisk. PO Dolce did not remember providing an explanation to § 87(2)(b) prior to the frisk. § 87(2)(b) faced PO Dolce during the frisk. PO Dolce did not remember seeing any bulges on § 87(2)(b). Starting from the front and working his way to the back, PO Dolce frisked § 87(2)(b)'s waistband and four of his pockets. PO Dolce specifically frisked those areas because that is where individuals usually carry weapons. PO Dolce did not recollect why he specifically reached for those areas on § 87(2)(b). PO Dolce did not feel any items in his

waistband and did not remember feeling any items in his pockets. As § 87(2)(b) was being frisked, PO Vasquez and PO Gomez, who did not play a role in the frisk, stood next to him. The frisk lasted approximately thirty seconds. PO Dolce did not place his hands into § 87(2)(b)'s pockets, did not run his fingers inside the opening of § 87(2)(b)'s shoes, did not pull § 87(2)(b)'s pant legs up, and did not run three fingers on the inside of his pockets.

§ 87(2)(b)'s vehicle was not searched and he did not see PO Vasquez or PO Gomez search § 87(2)(b)'s vehicle. PO Dolce did not hear PO Gomez or PO Vasquez say to § 87(2)(b) "Shut up. You want to go to jail?" PO Dolce did not call § 87(2)(b) a "hard ass" or an "asshole" and he did not hear PO Gomez or PO Vasquez call § 87(2)(b) those names.

After the frisk, PO Dolce instructed § 87(2)(b) to re-enter his vehicle and he complied. The officers re-entered their van and PO Vasquez wrote § 87(2)(b) a summons for having a covered license plate. PO Dolce was presented with a copy of the summons written by PO Vasquez. PO Dolce did not remember seeing that summons, but confirmed that the reason for the summons was a covered license plate. PO Vasquez handed the summons to § 87(2)(b). § 87(2)(b) did not approach the officers while they sat in the van. PO Dolce did not remember § 87(2)(b) requesting their names and shield numbers. After the summons was given to § 87(2)(b) the officers resumed patrol.

PO Dolce was presented with the handwritten version of the Stop, Question, and Frisk Report for § 87(2)(b). § 87(2)(b) was stopped because of his movement in his vehicle and his non-compliance with the officers' instructions. PO Dolce did not remember what it was about § 87(2)(b)'s non-compliance that led him to believe that § 87(2)(b) was armed, but later stated, "people lie." PO Dolce indicated that the additional factors that led to the frisk included evasive, false, or inconsistent answers to officers' questions; however, PO Dolce did not remember what that additional factor was in reference to. PO Dolce did not suspect § 87(2)(b) of any other crime, other than criminal possession of a weapon. Aside from moving his hands in his vehicle, PO Dolce did not remember any other reason he suspected that § 87(2)(b) possessed a weapon.

Subject Officer: PO CESAR GOMEZ

- *PO Gomez is a § 87(2)(b)*
- *On October 6, 2012, PO Gomez worked from 7:30 p.m. to 4:05 a.m. the following day and was assigned as the Impact Training Officer. PO Gomez worked with PO Jeremy Cartica, PO Jonathan Vasquez, and PO Gene Dolce. The officers were in uniform and were assigned to a marked van, vehicle number 8610.*

Memo Book

At 10:15 p.m., PO Gomez wrote that a car stop was conducted at Morris Avenue and East 184th Street. At 10:18 p.m., PO Vasquez issued a summons (encl. 13a-c).

CCRB Statement

PO Gomez was interviewed at the CCRB on June 6, 2013 (encl. 14a-b) and was re-interviewed at the CCRB on July 24, 2013 (encl. 15a-b). His statement was generally consistent with PO Dolce's statement, with the following exceptions.

On October 6, 2012, after § 87(2)(b) was pulled over, PO Dolce spoke to § 87(2)(b) and PO Gomez stood on the passenger's side of the car. PO Gomez did not remember PO Vasquez's location. PO Gomez could not hear the conversation between PO Dolce and § 87(2)(b). PO Gomez used his flashlight to look through the window of the vehicle for weapons, but he did not see any weapons. In his second statement, PO Gomez stated that he could not say with one hundred percent certainty that he flashed his flashlight into § 87(2)(b)'s vehicle. PO Gomez did not remember searching the car nor did he remember PO Vasquez searching the car. PO Gomez did not call § 87(2)(b) a "hardass" and an "asshole," nor did he hear PO Dolce or PO Vasquez use those words. PO Gomez did not say to § 87(2)(b) "Shut up. You want to go to jail?" nor did he hear PO Dolce or PO Vasquez say that.

After § 87(2)(b) exited his vehicle and stood at the rear, PO Gomez looked inside of § 87(2)(b)'s car. In his second statement, PO Gomez clarified that when looking inside of the vehicle, he did not remember placing any body parts in § 87(2)(b)'s vehicle. While PO Dolce spoke to § 87(2)(b), PO Vasquez and PO Gomez re-entered the van. While in the van, PO Gomez helped PO Vasquez write a summons. PO Gomez did not hear PO Dolce ask § 87(2)(b) for his license and registration and he did not see how PO Vasquez obtained § 87(2)(b)'s identification to write the summons. PO Gomez was presented with a copy of the summons written by PO Vasquez. PO Gomez did not remember seeing a covered license plate on § 87(2)(b)'s vehicle.

PO Gomez did not see § 87(2)(b) get frisked, but later stated in his second interview that PO Dolce frisked § 87(2)(b) for approximately twenty seconds. PO Gomez did not remember where on his body § 87(2)(b) was frisked. PO Gomez did not remember if PO Dolce said anything to § 87(2)(b) prior to the frisk. PO Gomez did not remember hearing any instructions given to § 87(2)(b) prior to him exiting the vehicle. PO Dolce did not run his fingers inside of § 87(2)(b)'s pockets or shoes. PO Gomez did not see PO Dolce pull § 87(2)(b)'s pant legs up. After § 87(2)(b) was instructed to re-enter his vehicle, PO Vasquez gave the summons to § 87(2)(b) and PO Gomez stood on the passenger's side of § 87(2)(b)'s vehicle. PO Gomez did not remember § 87(2)(b) approaching the van and asking for the officers' names and shield numbers. PO Gomez did not say, "Hurry up. We don't have time for this shit" nor did he hear PO Dolce or PO Vasquez make that statement.

PO Gomez was presented with a copy of the handwritten Stop, Question, and Frisk Report completed by PO Dolce. PO Gomez did not remember any furtive movements made by § 87(2)(b). In regards to the refusal to comply with officer's directions, PO Gomez did not know what instructions were given to § 87(2)(b). PO Gomez did not give any instructions to § 87(2)(b).

Officer Not Interviewed

PO Vasquez started his military leave after the incident and his leave was extended to March 2014. Therefore, PO Vasquez could not be interviewed.

MOS Employment Status

As of August 1, 2013, PO Dolce resigned from the New York City Police Department (encl. 25d).

NYPD Documents

Summons

PO Vasquez issued summons number § 87(2)(b) to § 87(2)(b) for having a covered license plate (encl. 16a-b).

Roll Call

According to the roll call, PO Dolce and PO Vasquez were assigned to Impact and PO Gomez was assigned as the Impact Field Training Officer (encl. 17a-g).

Summons for Incident and Disposition

- The disposition of the summons has not yet been received.

Status of Civil Proceedings

- § 87(2)(b) has not filed a Notice of Claim with the City of New York as of January 9, 2014 with regard to the incident (encl. 21a).

§ 87(2)(c)

Civilian CCRB History

- This is the first CCRB complaint filed by § 87(2)(b) (encl. 4a).

Subject Officers CCRB History

- Prior to resigning, PO Dolce was a member of the service for one year and there were no substantiated CCRB allegations against him (encl. 1a).
- PO Gomez has been a member of the service for seven years and there is one substantiated CCRB allegation against him (encl. 2a).
 - The Board recommended charges for case 200807471, which dealt with a stop allegation. The NYPD issued instructions for PO Gomez.
- PO Vasquez has been a member of the service for two years and there are no substantiated CCRB allegations against him (encl. 3a).

Conclusion

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Identification of Subject Officers

PO Dolce and PO Gomez acknowledged interacting with § 87(2)(b) PO Dolce and PO Gomez confirmed PO Vasquez's presence.

§ 87(2)(b) stated that one of the officers, he didn't know who, called him an "asshole." PO Dolce and PO Gomez denied calling § 87(2)(b) an "asshole" and PO Vasquez could not be interviewed because of his active military duty. Because § 87(2)(b) could not attribute the discourteous remark to a specific officer, because PO Dolce and PO Gomez denied making that discourteous remark, and because PO Vasquez could not be interviewed, the investigation was unable to determine which of the officers made the discourteous remark to § 87(2)(b).

Investigative Findings and Recommendations

Allegation A- Abuse of Authority: PO Jonathan Vasquez searched the car in which § 87(2)(b) was an occupant.

PO Vasquez was on military leave after the incident date and could not be interviewed.

§ 87(2)(g)

Allegation B- Abuse of Authority: PO Cesar Gomez searched the car in which § 87(2)(b) was an occupant.

Allegation E- Abuse of Authority: PO Cesar Gomez threatened to arrest § 87(2)(b)

Allegation G- Discourtesy: PO Cesar Gomez spoke discourteously to § 87(2)(b)

§ 87(2)(b) stated that PO Gomez searched his vehicle and threatened to arrest him. § 87(2)(b) also stated that PO Gomez said, "We ain't got time for this shit" when he asked for time to record their names and shield numbers. PO Gomez denied the allegations. PO Dolce did not hear the threat of arrest or the discourtesy and he did not see PO Gomez search the vehicle. PO Vasquez could not be interviewed due to his military leave status. § 87(2)(g)

Allegation C- Abuse of Authority: PO Gene Dolce frisked § 87(2)(b)

Allegation D- Abuse of Authority: PO Gene Dolce searched § 87(2)(b)

PO Dolce resigned from the New York City Police Department on August 1, 2013. § 87(2)(g)

Allegation F- Discourtesy: An officer spoke discourteously to § 87(2)(b)

§ 87(2)(b) Smith stated that one of the officers called him a "hard ass" and an "asshole." Because § 87(2)(b) was unable to attribute the discourteous remarks to a specific officer, because PO Gomez and PO Dolce denied making those statements, and because PO Vasquez could not be interviewed due to his military status, § 87(2)(g)

Team: One

Investigator: _____
Signature Print Date

Supervisor: _____
Title/Signature Print Date

Reviewer: _____
Title/Signature Print Date

Reviewer: _____
Title/Signature Print Date